

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**MERCK EPROVA AG and
MERCK KGaA**

Plaintiffs,

-vs.-

PROTHERA, INC.,

Defendant.

08 CV 00035 (RMB)(JCF)

**PLAINTIFFS' NOTICE OF MOTION TO DISQUALIFY FROMMER LAWRENCE
& HAUG LLP AS COUNSEL FOR DEFENDANT PROTHERA, INC.**

Plaintiffs Merck Eprova AG and Merck KGaA (collectively "Merck" or "Plaintiffs") hereby move the Court for an order disqualifying Frommer Lawrence & Haug LLP ("Frommer") as counsel for Defendant ProThera, Inc. ("ProThera") in this action, together with such other and further relief as the Court deems just and proper.

Merck's Motion is based on this Notice of Motion, the supporting Memorandum of Law, the Declaration of Dr. Rudolf Moser and the exhibits attached thereto, the Declaration of Dr. Vera A. Katz and the exhibits attached thereto, the Declaration of Robert E. Hanlon and the exhibits attached thereto, all of which are submitted herewith, portions of which have been submitted to be filed under seal, and such additional evidence and argument that may be submitted with respect to this matter. For the reasons set forth in Merck's Memorandum of Law, Merck respectfully requests that the Court disqualify Frommer from its representation of ProThera due to a legal conflict arising from at least Frommer's concurrent representation of both Merck and ProThera.

Before bringing this motion, Merck conferred in good faith with Frommer on several occasions in order to resolve this dispute; however, the parties have been unable to resolve this dispute.

Dated: June 5, 2009

New York, New York

Respectfully submitted,

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